



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

October 10, 2017

Todd Ortiz
Macon County Humane Society
P. O. Box 81
Franklin, NC 28744

Notice of Warning

Re: Violations of Title 02 N.C. Administrative Code ("NCAC") Chapter 52J, Sections .0203(a), and .0204(b) and (d).

AWS-WL-2017-21

Animal Shelter: Appalachian Animal Rescue Center
Registration No. 39

Dear Mr. Ortiz:

The Animal Welfare Section ("AWS") of the Veterinary Division of the NC Department of Agriculture and Consumer Services ("NCDA&CS") received a complaint concerning the Appalachian Animal Rescue Center ("the shelter"). Based on the information within this complaint, AWS opened an investigation.

The investigation included a site visit by AWS Animal Health Technician Joshua James ("Inspector James"), interviews with shelter management and staff and a follow-up site visit.

The initial site visit documented the following deficiencies:

- 1) The gravel in the 2 play areas was less than the required minimum depth of 6 inches;
- 2) Seven dogs were housed in primary enclosures that did not provide space to allow each dog to walk, turn about freely, to easily stand, sit or lie in a natural position; and
- 3) Seven dogs were not provided sufficient square footage of floor space in their primary enclosures.

The follow-up site visit documented that 6 of the dogs had been moved to primary enclosures compliant with 02 NCAC 52J .0204(b) and (d). One dog was in an enclosure that was not compliant with 02 NCAC 52J .0204(b) and (d), but was moved within 15 minutes.

Based on the results of this investigation, the shelter appears to have violated 02 NCAC 52J .0203(a) and .0204(b) and (d).

This Warning Letter serves as written notice indicating in which respects the shelter has violated the NC Animal Welfare Act and the rules issued pursuant thereto.

Continued or future violation of these statutes or regulations will be considered a willful disregard or violation of the NC Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NC General Statute §19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NC General Statute §19A-40.

Your immediate response to this matter is noted and appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Norris', with a long horizontal line extending to the right.

Patricia Norris, DVM, MS
Director of Animal Welfare Section
Veterinary Division

cc: Dr. R. Douglas Meckes, State Veterinarian
Joe Reardon, Assistant Commissioner, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

Appendix

REFERENCED STATUTES AND REGULATIONS

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) In outdoor facilities that are subject to the Animal Welfare Act, primary enclosures and walkways with which an animal comes in contact shall be constructed of sealed concrete or other surfaces impervious to moisture. Gravel may be used if maintained at a minimum depth of six inches and kept in a sanitary manner.

History Note: *Authority G.S. 19A-24;*
 Eff. April 1, 1984;
 Amended Eff. March 23, 2009; January 1, 2005.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

(d) In addition to Paragraph (b) of this Rule, each dog shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six inches, then divide the product by 144. The calculation is: $(\text{length of dog in inches} + 6) \times (\text{length of dog in inches} + 6) = \text{required floor space in square inches}$. $\text{Required floor space in square inches} \div 144 = \text{required floor space in square feet}$. The calculation shall be expressed in square feet. Not more than four adult dogs shall be housed in the same primary enclosure without supervision.

History Note: *Authority G.S. 19A-24;*
 Eff. April 1, 1984;
 Amended Eff. January 1, 2005; April 1, 1985.